

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Kehoe
(Coauthors: Assembly Members Chan, Chu, Diaz, Firebaugh,
Goldberg, Hancock, Koretz, Laird, Leno, Levine, Lieber,
Longville, Montanez, Nation, Steinberg, Vargas, and Wiggins)
(Coauthors: Senators Burton, Kuehl, and Vasconcellos)

December 2, 2002

An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Kehoe. State contracts: acquisition of goods or services.

Existing law authorizes the Department of General Services to contract with suppliers to acquire goods and services for state agencies.

This bill would prohibit a state agency from entering into a contract for the acquisition of goods or services with a vendor or contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees, except as otherwise specified.

This bill would also require that every state contract to acquire goods and services contain a statement by the vendor or contractor certifying that the vendor or contractor is in compliance with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.3 is added to the Public Contract
2 Code, to read:
3 10295.3. (a) (1) Notwithstanding any other provision of
4 law, no state agency may enter into any contract for the acquisition
5 of goods or services with a vendor or contractor who, in the
6 provision of benefits, discriminates between employees with
7 spouses and employees with domestic partners, or discriminates
8 between the domestic partners and spouses of those employees.
9 (2) For purposes of this section, “domestic partner” means one
10 of two persons who has filed a declaration of partnership with the
11 Secretary of State pursuant to Division 2.5 (commencing with
12 Section 297) of the Family Code.
13 (3) These benefits may include, but are not limited to:
14 (A) Bereavement leave.
15 (B) Family medical leave.
16 (C) Health benefits.
17 (D) Membership or membership discounts.
18 (E) Moving expenses.
19 (F) Pension.
20 (G) Retirement benefits.
21 (H) Travel benefits.
22 (4) This section does not apply to any contracts executed or
23 amended prior to July 1, 2004, or to bid packages advertised and
24 made available to the public, or any competitive or sealed bids
25 received by the state, prior to July 1, 2004, unless and until those
26 contracts or property contracts are amended after June 30, 2004,
27 and would otherwise be subject to this section.
28 (b) Contractors or vendors shall treat as confidential to the
29 maximum extent allowed by law or by the requirement of the
30 contractor’s or vendor’s insurance provider, any request by an
31 employee or applicant for employment for domestic partner or
32 spousal benefits or any documentation of eligibility for domestic
33 partner or spousal benefits submitted by an employee or applicant
34 for employment.



(c) After taking all reasonable measures to find a contractor or vendor that complies with this section, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency that endangers the public health or safety and no entity which complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent, with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any public agency with respect to any grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where there are no qualified responsive bidders or prospective contractors or vendors who could comply with the requirements of this section and the contract is essential to the state and state residents.

(5) Where the contractor or vendor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of the same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures; and further provided that this exemption does not apply to contractors, vendors, or franchises providing direct retail services to end users.

(d) In the event that the contractor's or vendor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's or vendor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor or vendor may not be deemed to discriminate in the provision of benefits if the contractor or vendor conditions providing the benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor or vendor is unable to provide a certain benefit,

1 despite taking reasonable measures to do so, the contractor or
2 vendor may not be deemed to discriminate in the provision of
3 benefits if the contractor or vendor provides the employee with a
4 cash payment equal to the amount that the contractor or vendor
5 pays to provide that benefit to the spouse of an employee.

6 (e) A vendor or contractor may not be deemed to discriminate
7 in the provision of benefits between employees with spouses and
8 employees with domestic partners, or between the domestic
9 partners and spouses of those employees, if the vendor or
10 contractor does not discriminate in the provision of those benefits
11 between employees with spouses and employees with domestic
12 partners, or between the domestic partners and spouses of those
13 employees, in doing any of the following:

14 (1) Offering the same benefits to employees with domestic
15 partners and employees with spouses and offering the same
16 benefits to domestic partners and spouses of employees.

17 (2) Electing to provide benefits to individuals in addition to
18 employees' spouses and employees' domestic partners.

19 (3) Electing to provide benefits on a basis unrelated to an
20 employee's marital status or domestic partnership status,
21 including but not limited to, allowing each employee to designate
22 a legally domiciled member of the employee's household as being
23 eligible for benefits.

24 (4) Electing not to provide benefits to employees based on their
25 marital status or domestic partnership status, or electing not to
26 provide benefits to employees' spouses and to employees'
27 domestic partners.

28 (f) (1) *Every contract subject to this chapter shall contain a*
29 *statement by which the vendor or contractor certifies that the*
30 *vendor or contractor is in compliance with this section.*

31 (2) *The department or other contracting agency shall enforce*
32 *this section pursuant to its existing enforcement powers.*

33 (g) Nothing in this section is intended to regulate the
34 contracting practices of any local jurisdiction.

35 ~~(g)~~

36 (h) This section shall be construed so as not to conflict with
37 applicable federal laws, rules, or regulations. In the event that a
38 court or agency of competent jurisdiction holds that federal law,
39 rule, or regulation invalidates any clause, sentence, paragraph, or
40 section of this code or the application thereof to any person or

1 circumstances, it is the intent of the state that the court or agency
2 sever that clause, sentence, paragraph, or section so that the
3 remainder of this section shall remain in effect.

4 *SEC. 2. Section 10295.3 of the Public Contract Code shall not*
5 *be construed to create new enforcement authority or responsibility*
6 *in the department or any other contracting agency.*

